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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10-072,161	02/07/2002	Men Glenn Chu	46AA	2626

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5260 DEBORAH COURT
DOYLESTOWN, PA 18901

EXAMINER

ELVE, MARIA ALEXANDRA

ART UNIT	PAPER NUMBER
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1725

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,161

Applicant(s)

CHU ET AL.

Examiner

M. Alexandra Elve

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 25-41 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 6) ☐ Other:

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DETAILED ACTION

Claim Objections

Claims 26-41 are objected to because of the following informalities: theses claims refer to previous claims stating a process while the claims are directed to an aluminum product. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mosier et al. (US Pat. 4,917,964).

Moshier et al. discloses an aluminum matrix containing titanium carbides. The composite contains finely dispersed second phase, particulate ceramic, intermetallic particles, such as titanium carbide. The composite has a substantially uniform dispersion and uniform particle size distribution. The incidence of interparticle sintering increases with volume fraction, thus it is preferable to maintain the second phase particles, that is, titanium carbides at less than 70 volume percent of the composite.

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This generates separate and distinct carbides in the aluminum matrix. The particle size of the dispersoid particles may vary from about 0.01 to about 5 microns, preferably from 0.1 to about 3 microns. (abstract, col. 5, lines 63-68, col.6, lines 5-13, 32-58, col. 13, lines 24-63, col. 20, lines 27-37).

Moshier et al. does not teach process limitations, mechanical properties or an airframe.

The prior art discloses a product substantially similar to a claimed product, differing only in the manner by which it is produced. It has been held that one of ordinary skill in the art at the time of the invention would have considered the claimed compositions to have been obvious because of the similarity in the properties, and overlapping ranges. The burden falls to the applicant to show that any process steps associated with the claimed product result in a materially different product from those of the prior art, because there is nothing in the record before the examiner to reasonably conclude that applicants product differs in kind from those obtained by the references. See In re Brown 173 USPQ 685 and In re Fessmann 180 USPQ 324.

Although Moshier et al. teaches an aluminum matrix with titanium carbide particles, mechanical properties and so forth are not exactly the same as applicants. However, if a composition is physically the same, it must have the same properties. A chemical composition and its properties are inseparable. Therefore the prior art teaches

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the same chemical composition, the properties of instant claims are necessarily present.

See In re Spada, 15 USPQ 2d 1655, 16.

It would have been obvious to one having ordinary skill in the art at the time of the invention to shape, size or form the prior art alloy any shape, size or form, because change of shape, size and form has been held an obvious variant in any art. See In re Rose 105 USPQ 137.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See US PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Alexandra Elve whose telephone number is 703-308-0092. The examiner can normally be reached on 6:30-3:00 Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on 703-308-3318.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

August 7, 2003.

[Faint, illegible handwritten text]